THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0653, <u>Marjan International Corp. v. Mohammad Enayat d/b/a Sutter and Hayes Rug Outlet</u>, the court on October 2, 2006, issued the following order:

The plaintiff, Marjan International Corp. (Marjan), appeals an order of the trial court dismissing its action after finding it barred by the statute of limitations. On appeal, Marjan argues that the trial court erred in finding that: (1) the three-year statute of limitations applied to the parties' consignment sales contract; and (2) the breach of contract occurred on September 26, 2000. The defendant, Mohammed Enayat d/b/a Sutter and Hayes Rug Outlet, contends that Marjan failed to raise its argument concerning the applicable statute of limitations in the trial court. We affirm.

In its brief, Marjan argues that the contract giving rise to its claim was a contract for sale subject to the four-year statute of limitations established under Article 2 of the Uniform Commercial Code. <u>See</u> RSA 382-A:2-725(1) (1994). Having reviewed the record before us, we have found no evidence that this argument was raised before the trial court. We therefore decline to consider it on appeal. <u>See</u> <u>State v. Blackmer</u>, 149 N.H. 47, 48 (2003).

Marjan also contends that the trial court erred in finding that the breach of contract occurred on September 26, 2000, because on that date "the defendant performed according to his obligations and expressed an intention to continue doing so." Even if we assume without deciding that the defendant continued to perform under the contract on September 26, 2000, the evidence presented at trial compels a finding that the defendant ceased performing no later than October 11, 2000. We therefore affirm the ruling of the trial court that the plaintiff's action was barred by the statute of limitations.

The appellant's motion for transmittal of trial exhibits filed five days after oral argument is denied. <u>See</u> Supreme Court Rule 13 (3).

<u>Affirmed</u>.

DALIANIS, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**